

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 324 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

HEIRS OF VASUDEV SHIVSHANKER THAKER

Versus

RATILAL LABHSHANKER THAKER

Appearance:

MR PRANAV G DESAI for Petitioners

MR PJ VYAS for Respondent No. 1

Respondent No. 2 served

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 04/09/97

ORAL JUDGEMENT

1. This Civil Revision Application is filed by the petitioners who are the original plaintiffs and since both the petitioners have expired during the pendency of this proceeding, their heirs are already brought on record. The respondents are the original defendants. The present Civil Revision Application is filed by the

petitioners for quashing and setting aside the order

dated 18th February, 1994 passed by the Extra Assistant Judge, Mehsana in Misc. Civil Appeal No. 14 of 1994 whereby he quashed and set aside the order passed by the Civil Judge, Junior Division, Sidhpur dated 23rd December, 1993 on Exhibit 5 in Civil Suit No. 49 of 1993. It appears that the petitioners filed the Regular Civil Suit No.49 of 1993 in the court of Civil Judge, Junior Division at Sidhpur for declaration to the effect that the defendants have no right, title or interest over the suit land and to enter into the suit land so as to disturb the possession of the petitioners and that they have also no right to obtain permission for non-agricultural use of the said land and of sub-plotting the said part of land bearing Survey No.1315 admeasuring 1 Acre and 8 Gunthas and also for permanent injunction. In such suit, by making an application at Exhibit -5, the plaintiffs applied for temporary injunction to restrain the defendants from entering into the said parcels of land and to restrain them from disturbing the peaceful possession of the land of the plaintiffs. The suit was based on the ground that the plaintiffs were the owners and in possession of part of Survey No. 1315. It was their case that they were in possession of the disputed land since 1937 - 1938 and that the defendants have no right, title or interest over the suit land. They further contended that the defendants wanted to enter into the disputed land and to disturb their possession and after obtaining permission for non-agricultural use

of the said land, they wanted to subplot the land. It was for that reason that the temporary injunction was sought.

2. The defendants have appeared and resisted the suit by filing the reply Exhibit 19. It was the contention of the defendants that the plaintiffs have no right, title or interest in the suit land and that suit of the plaintiffs was barred by limitation. It was their further case that land admeasuring 4 Acres and 18 Gunthas of Survey No. 1315 went into the share of the plaintiffs and father of the defendant No.1 and entry to that effect being being entry No. 1582 was made in the Revenue Record in the year 1960, out of which, land admeasuring 39 Gunthas was sold to Pradhanji Anupji and the land admeasuring 3 Acres and 19 Gunthas remained with the plaintiffs and father of defendant No.1. It was their further case that out of the remaining land, 13 Gunthas of land was sold to Patel Tribhovandas and the balance

land admeasuring 2 Acres and 29 gunthas remained with the plaintiffs and the father of defendant No.1. On such and other contentions, the trial court proceeded to decide Exhibit - 5 application and by order dated 26th of May, 1993, granted the ad interim injunction. The said order of ad interim injunction was confirmed on 23rd December, 1993. However, in Civil Misc. Appeal No. 14 of 1994, the Extra Assistant Judge, Mehsana, after hearing the parties, allowed the appeal and quashed and set aside the order passed by the trial court on 18th February, 1994. It is against such order that the present Civil Revision Application is preferred.

3. It must also be noted at this stage that the present petitioners have also filed Special Civil Application No.11199 of 1993 in this Court against respondent No.1 as well as the State of Gujarat being aggrieved by the order passed by the Collector as well as the Deputy Secretary and in such Special Civil Application, the Hon'ble Court has granted ad interim relief directing the parties to maintain status quo qua possession of the land in question. It is unfortunate that in neither of the proceedings, order is passed that both the matters should be heard together. However, I have directed the Special Civil Application to be placed for hearing before this Court so that question of conflict of any decision may not arise.

4. Having heard Mr. Pranav G. Desai for the petitioners and Mr. P.J. Vyas for the respondent, in my opinion, if the ad interim relief directing the parties to maintain status quo as on 2nd March 1994 is confirmed, interest of justice will be met and ultimately the anxiety of this court shall be to see that the interest of the widow is protected for which every attempt will be made by this Court while deciding the Special Civil Application No. 11199 of 1993.

5. In the result, the Rule is made absolute to the extent of directing the parties to maintain status quo as the same prevailed on 2nd of March, 1994. There shall be no order as to costs.
